

PT 02-51

Tax Type: Property Tax

Issue: Educational Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

DE PAUL UNIVERSITY,
APPLICANT

v.

ILLINOIS DEPARTMENT
OF REVENUE

No.	01-PT-0014 (99-16-1353)
P.I.N.S:	14-32-209-016 14-32-209-017 14-32-209-018 14-32-209-019 14-32-209-037

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Messrs. John J. Lawlor and Kenneth H. Hoch of Sonnenschein, Nath & Rosenthal on behalf of DePaul University (the “applicant”); Mr. George Foster, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue (the “Department”)

SYNOPSIS: This proceeding raises the limited issue of whether real estate identified by Cook County Parcel Index Numbers 14-32-209-016, 14-32-209-017, 14-32-209-018, 14-32-209-019 and 14-32-209-037 (hereinafter collectively referred to as the "subject property") was "used ... exclusively for school purposes ..." as required by Section 15-35(b) of the Property Tax Code, 35 ILCS 200/1-1 *et seq.* during the 1999 assessment year. The underlying controversy arises as follows:

Applicant filed a Real Estate Tax Exemption Complaint with the Cook County Board of Review ("Board") on May 11, 2000. The Board reviewed applicant's complaint and thereafter recommended to the Department that the requested exemption be granted.

The Department then issued its initial determination in this matter, finding that the subject property is not in exempt use, on December 14, 2000. Applicant a filed a timely appeal to this denial and later presented evidence at a formal evidentiary hearing. Following submission of all evidence and a careful review of the record, I recommend that the Department's initial determination be reversed.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position herein are established by the admission of Dept Group Ex. No. 1.
2. The Department's position in this matter is that the subject property is not in exempt use. *Id.*
3. Applicant is a private Catholic University whose main campus is located in the Lincoln Park neighborhood of Chicago. Applicant Ex. No. 5; Tr. p. 22.
4. The Department has exempted property situated on applicant's main campus under terms of determinations in Docket Nos. 98-16-732, 98-16-733 and 98-16-770. Administrative Notice.
5. Applicant obtained ownership of the subject property, which is situated on its main campus, via a series of instruments submitted as Applicant Ex. No. 3.¹
6. Applicant acquired the subject property as part of a larger project to expand and modernize its existing campus facilities. This plan called for construction of several new facilities, including an athletic center that was intended for student recreation. Applicant Ex. No. 5; Tr. pp. 24-27.

¹. The issues of whether applicant: (a) in fact owned the subject property during the tax year in question; and, (b) qualifies as a "school" within the meaning of 35 ILCS 200/15-35(b), are not at issue in this proceeding. Tr. pp. 12-15. *See also, infra*, at pp. 4-5.

7. Applicant planed to build the athletic center, which was to be named the “Ray Meyer Center,” (the “Center”) on the subject property. However, it could not proceed with construction until it first reached a usage agreement with various interested community groups and then obtained approval for the project from the Chicago City Council. Applicant Ex. No. 6; Tr. pp. 28-43.
8. The finalized, amended usage agreement, dated March 31, 1998, provided, *inter alia*, that: (a) construction on the center was to begin in mid-1998; and, (b) activities provided at the center were to include jogging, running, basketball, swimming, weight training, aerobics, rock climbing, racquetball and volleyball. Applicant Ex. No. 6B.
9. The finalized, amended agreement further stated, *inter alia*, that the center “is intended to be used for DePaul University students, faculty, staff and guests and used in a limited fashion by neighbors and is not intended to be rented out to other organizations for outside events and activities, such as evening and weekend basketball leagues.” *Id.*
10. The center, a four story, 32,205 square foot building, was under construction from June of 1998 until it opened on September 1, 1999. Dept. Ex. No. 1; Tr. p. 20.
11. Applicant’s final construction cost for the center was \$12.5 million. Tr. p.24.

CONCLUSIONS OF LAW:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Section 15-35(b) of the Property Tax Code, wherein “property of schools on which the schools are located and any other property of schools used by the schools exclusively for school purposes” is exempted from real estate taxation. 35 **ILCS** 200/15-35(b). The statutory requirements for this exemption are: (1) exempt ownership, which means that the property must be owned by a duly qualified “school”² (Wheaton College v. Department of Revenue, 155 Ill. App.3d 945 (2nd Dist. 1987)); and, (2) exempt use, which means that the property must be “exclusively” or primarily used for “school”-related purposes. (People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944)). Only the latter requirement is at issue herein, as the instant denial was based solely on lack of exempt use.

Exempt use can be found where applicant proves that: (1) it is actively developing the property in question for a specifically identifiable exempt use during the tax year in question. (Weslin Properties v. Department of Revenue, 157 Ill. App.3d 580 (2nd Dist.

². The legal definition of the term “school” is, for property tax purposes, as follows:

A school, within the meaning of the Constitutional provision, is a place where systematic instruction in useful branches is given by methods common to schools and institutions of learning, which would make the place a school in the common acceptance [sic] of the word.

People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 137 (1911).

1987); (Lutheran Church of the Good Shepherd of Bourbonnais v. Illinois Department Of Revenue, 316 Ill. App.3d 828 (3rd Dist., 2000).); or, (2) its use of the property is deemed "reasonably necessary" to support another exempt uses or contribute to the efficient administration thereof. (MacMurray College v. Wright, 38 Ill.2d 272 (1967); Memorial Child Care v. Department of Revenue, 238 Ill. App. 3d 985 (4th Dist. 1992)).

Here, applicant was actively developing the subject property for use as an athletic center that was to be used primarily for the benefit of its student and faculty populations throughout the tax year in question. Exemption of a similar facility was upheld in People ex rel. Goodman v. University of Illinois Foundation, *supra*, at p. 371, on grounds that it was a "reasonably necessary adjunct" to the educational activities taking place at the main campus of the University of Illinois in Champaign, Urbana. To the extent that the same may be said of this facility, it should likewise be exempt from real estate taxation.

The fact that applicant allows members of the surrounding Lincoln Park community who have no affiliation with the University to use the center does not alter this conclusion. Applicant allows such persons limited use of the center pursuant to the terms of a contractual agreement with various community groups that had initially opposed the center's construction. Therefore, this agreement simply constitutes the mechanism by which applicant was able to overcome the legal, political or other practical obstacles that would have prevented it from erecting this critical element of its revitalization plan.

Public policy disfavors effectuating legal or practical impediments that prevent otherwise tax exempt entities, such as applicant, from acquiring real estate for "school"-

related or other tax exempt purposes. People ex rel. Goodman v. University of Illinois Foundation, *supra*; Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51 (1978); Cole Hospital v. Champaign County Board of Review, 113 Ill. App. 3d 96 (4th Dist. 1983). Accordingly, those provisions of the agreement that provided community members with incidental usage rights in exchange for their support of the center's construction ought not destroy the subject property's exempt status. Therefore, the Department's determination in this matter should be reversed.

WHEREFORE, for all the above-stated reasons, it is hereby recommended that real estate identified by Cook County Parcel Index Number 14-32-209-016, 14-32-209-017, 14-32-209-018, 14-32-209-019 and 14-32-209-037 be exempt from 1999 real estate taxes under Section 15-35(b) of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.*, 15-35(b).

07/29/02
Date

Alan I. Marcus
Administrative Law Judge